Supreme Court, U.S.
FILED
NOV 7 - 2008
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NO. 08-458

In The
# Supreme Court of the United States

**CLAUDIA BROTHERS, et al.**
*Petitioners,*

**v.**

**SUMMIT COUNTY, OHIO, et al.**
*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court of Appeals for the Sixth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTION PRESENTED FOR REVIEW BY PETITIONER

1. Does the Fourth Amendment demand that law enforcement officers disclose in a second or subsequent search warrant affidavit information they discovered during an initial search that casts doubt upon the veracity of a confidential informant?

2. Does the Fourth Amendment demand that law enforcement officers disclose in a second or subsequent search warrant affidavit the absence of items that based upon their confidential informant's information, they expected to find?

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## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## STATEMENT OF THE CASE AND FACTS

The U.S. District Court for the Northern District of Ohio set forth facts in support of its decision in this matter. The Sixth Circuit Court of Appeals found this factual summary and opinion to be well reasoned and thorough and thus affirmed without issued a detailed opinion.

This case arises as the result of an underlying criminal investigation and prosecution. The Complaint sets forth a 42 U.S.C. §1983 claim for redress of alleged violations of Plaintiffs' Fourth Amendment rights against unlawful and improper search and seizure. Plaintiffs further allege that the Defendants actions constitute a false arrest and false imprisonment under the federal and state constitution, intentional infliction of severe emotional distress, invasion of privacy and defamation.

Defendants filed their Answer and submitted that (1) Plaintiffs failed to assert that a policy custom or practice caused the alleged violations; (2) the defenses of R.C. § 2744 immunity, and qualified immunity precluded suit; (3) the searches did not violate Plaintiffs' Fourth Amendment rights; (5) the searches were made pursuant to warrant and upon the advice of counsel; (6) and Plaintiffs' failed to set forth facts

sufficient to establish false arrest, false imprisonment, intentional infliction of emotional distress, invasion of privacy, and defamation.

Discovery proceeded in the matter with the exchange of paper discovery and many depositions. Defendants then filed a Motion for Summary Judgment arguing that there were no facts that would support Plaintiffs' claims and that the case must be dismissed. The District Court agreed and granted summary judgment in favor of the Defendants.

The Sixth Circuit affirmed. On petition for rehearing or rehearing en banc Brothers and Corsi sought to assert that the Court had missed key issues therein. The County asserted in response that there was no evidence in this case that critical evidence was withheld from the Judges when the search warrants were requested for the search of the daycare and the home of Davis Corsi and thus there was no merit to the allegation that the affiant had any intent to mislead. The County further asserted that there was no evidence in this case that a confidential informant was used in this case. In fact the Affidavit for search included the full name of each witness, including the children who were interviewed, and detailed the information provided by each witness, including any information which might have been construed as helpful to Corsi. Thus, there was no evidence in this case that the witnesses were unreliable nor that information was withheld from the Judges to

mislead the Judges. The Petition for rehearing or for Rehearing En Banc was denied on July 10, 2008. On October 8, 2008 Petitioner's filed their Petition for a writ of certiorari with this Court.

The relevant underlying facts of this case are virtually undisputed. For the purposes of the summary judgment motion, the most relevant facts were those in the knowledge of the County Sheriff's Department at the time that the searches and arrest were conducted. To determine whether the Defendants actions were appropriate, it is necessary to know what information was provided to them throughout the case. This includes the investigatory stage, the search stage and the prosecution stage.

## 1. THE INVESTIGATION STAGE

On or about March 18, 2002, the Summit County Sheriff's Department received a call from Captain Jeff Buck of the Reminderville Police Department. (MSJ, Affidavit of Rinear). Captain Buck advised Sheriff's Department Detective Linda Rinear (hereinafter Rinear) that a parent had called and reported that the owners of the KD Daycare (hereinafter Daycare) were taking children into a private room alone - Buck asked the Sheriff's Department to follow up on the call. (Id). Rinear was the lead investigator on the case. (Id). Rinear had received extensive training regarding the abuse and exploitation of children. (Id). Rinear spoke with Jean Hollan-Vincer, from the Ohio Department of Job and Family Services,

to determine what types of complaints they had received regarding the operation of the daycare. (Id). Hollan-Vincer advised that David Corsi owned the daycare and that Claudia Brothers was the Administrator. (Id). Hollan-Vincer provided Rinear with a list of prior complaints and resolutions since Corsi and Brothers had taken over running the daycare in 1996. (Id). Among these complaints was a complaint in October 2000 that Corsi frequently took a school age boy alone into an office room at the daycare, and that Mr. Corsi was sleeping at the daycare overnight and showering there. (Id). Hollan-Vincer stated that she spoke with Corsi about this complaint and about why there was a bed in the daycare. (Id). Corsi's response was that he occasionally stayed overnight at the center necessitating the bed. (Id). Hollan-Vincer further told Rinear that she advised Corsi at that time that it was not a good idea to have a bed in the daycare, nor was it a good idea to be alone with the children in the room where the bed existed. (Id). Hollan-Vincer also told Rinear that Claudia Brothers stated that she was a retired School Teacher in Canton and that David Corsi stated that he was a retired executive from Timken. (Id).

Inspector Keith Thornton followed up on this past employment information and determined the Corsi was a retired furnace worker, not an

executive, at Timken and that Brothers was not a retired teacher at the Canton Schools.[1] (Id).

Having obtained some background information about the daycare, Rinear then called and talked to the complaining parent, Cindy Kozlik. (MSJ, Affidavit of Rinear). Cindy advised Rinear that *although* she knew of no illegal conduct, *she was* uncomfortable with the owners taking her child into a private room. (Id). She also gave Rinear the name of two daycare employees who were willing to be interviewed about the happenings at the daycare. (Id). Rinear then contacted and met with employee Latasha Thomas. (Id). Latasha stated that David Corsi did take children into the private room both in groups and one on one. (Id). The door is shut while the children are in the room. (Id). Marvianne Barrett, another employee of the daycare, substantiated that these events were occurring as well. (Id). Based upon all of this information, Rinear was concerned because of the many red flags that were raised in her mind based upon her training in matters involving the abuse of children.

During her interviews with Latasha and Marvianne several children's names were

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[1] During Deposition Claudia Brothers testified that she is retired from the Canton School District. This information does not change the fact that Rinear was advised otherwise during the investigation.

provided as children who were alone with Mr. Corsi during the course of time in question. (Id). These names included C.M. and M.Z..[2] Rinear spoke with Cuyahoga Falls Prosecutor Dwayne Jones about the case. Thereafter, Detectives Rinear and Rodgers went to Nordonia Hills Elementary School and interviewed the children – both of whom were in third grade at said school. (Id). Prior to each interview the parents were contacted by telephone and consented to the interview. (Id).

During her interview with C.M., he reported that he has been in the private room with Mr. Dave (Corsi). (Id). In summary, he stated that he was in a secret club and that Mr. Dave was in charge of the club; that there was a bed that vibrates in the Private room; that there was a computer with the internet; that there was a video camera that Mr. Dave had the boys use to videotape the girls changing clothes and that the last time this occurred was last year; that the tapes were at one time under the bed and that Mr. Dave recently said they were in a drawer under the bed; that he had also taken some video tapes out to Mr. Dave's car that Mr. Dave said he was taking home; that no one is permitted to enter the private room when Mr. Dave is in there with

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[2] Although this is discussed herein, it must be clear that initials were not used to describe these child victims until the civil litigation led to privacy issues for the children. They were fully named in the affidavits for search in dispute.

someone else; that there is a TV, a pool, and toys in the room; that there is a secret door in the ceiling that you pull with a string to go into the crawl space and a ladder that comes down; that Mr. Dave told him his penis was his pickle and that a girls private area is a hamburger; and that the boys and Mr. Dave talk a lot about girls together. (Id). During the interview of M.Z. that immediately followed C.M.'s interview, M.Z. stated that at the daycare he is in a secret club and that Mr. Dave was in charge of the club; that Mr. Dave was also in charge of the girls club; that he has never told a secret; that the private room has a couch, toys, TV, and bed that folds up into a couch; that he watched movies like Robin Hood with Kevin Costner, and that Mr. Dave takes pictures of him and the other children. (Id). In an attempt to learn more about the building and to corroborate C.M.'s story, Rinear contacted Dennis Potter, Chief of the Northfield Center Fire Department, to determine whether he had been in the daycare building. (Id). She asked him whether it was possible for a child to crawl around in the ceiling in the building. (Id). Chief Potter was unable to provide this information. (Id). Additionally, Detective Kelly Fatheree was called and asked to take a walk through of the daycare to provide some information about the layout of the center. (Id). Kelly took a child with her and walked through the daycare. (Deposition of Fatheree). She then provided a summary of the layout of the center to Larry Limbert and Rinear. (Id). Following these interviews Detective Rinear again met with Prosecutor Dwayne Jones and

discussed the case. (MSJ, Affidavit of Rinear). It was decided that the only way to determine whether anything was going on was to conduct a search. Rinear prepared an affidavit outlining her entire investigation and providing all of the information that she had received during said investigation. (MSJ, Affidavit of Rinear, Attachment A-1). The affidavit was presented to then Cuyahoga Falls Municipal Court Judge Linda Teodosio and a search warrant was issued for the daycare center which limited the time the search could be conducted to daytime between the hours of 7:00 a.m. to 8:00 p.m.. (MSJ, Affidavit of Rinear, Attachment A-2).

## 2. THE SEARCH STAGE

The Sheriff's office appeared at the daycare on May 23rd around 3:40 p.m. The Detectives presented the warrant to the owners upon their arrival. Rinear did not participate in the actual search. The key actors in the search were Sergeant Larry Limbert and Detectives Paolucci, Stott, Cougenour, Brown, and Franklin. (Id). Each room in the facility was searched. Primary focus was placed upon the office and the Private Rooms described by the children. In the larger Private Room (which has the word PRIVATE above a peephole and the word eye below the peephole, they found a bed, a TV, a box of various videotapes (including PG13 and PG movies), and computer discs. (MSJ, Affidavit of Rinear, Attachment A-3, Attachment A-9). The bathroom attached to the private room was searched and a

Nine MM Jennings handgun with a loaded magazine was found in a drawer along with a 12" knife with a sheath. (Id).[3] There was also a sports illustrated swimsuit type calendar in the bathroom of the private room. (Id). Using a ladder, up against the wall in the bathroom of the private room you could push the drop ceiling tiles aside. There was at least 6-8 feet of space above the ceiling and below the roof of the building. (Id). The detectives found that a piece of drywall that separated the private bathroom from another bathroom had been cut out. There were what appeared to be fingerprints on the ceiling above this piece in the wall. (Id). They looked through the open spot and saw that they were looking at the ceiling for the next bathroom. (Id).

In a separate private office a detective found a yellow video camera in a plastic bag. (Id). While it was being catalogued into evidence and as Detective Coughenour was looking at the camera, his face appeared on the television screen in the separate private office where Detective Franklin was working. (Id). This is how the Detectives discovered how the wireless video camera may have been used. (Id). The detectives had noticed that each bathroom had ceiling tiles with small holes in the corners. (Id). The wireless

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[3] Although Petitioner's argue that the weapons were in a locked room, the prior statements of the child victims revealed that those kids were in the bathroom at issue on past dates and may have had access to those weapons on those dates.

camera lens fit perfectly into these holes with the lens pointing towards the toilet area of the bathroom. (Id). The detectives also found pictures of naked women that had been downloaded from the internet in the separate private office. (Id). There was another swimsuit type calendar in this office as well in plain sight with scantily clad women on it. (Id). Finding that the computer had likely been used to access pornography off of the internet, the decision was made to seize the computer hard drives, as well as items that could have been used in videos with the children. (Id). The items seized were taken back to the Sheriff's Department. (Id).

Stan Smith, a forensic investigator with the Akron Police Department inspected the hard drive of the computer and found hundreds of images of naked women, some of which were questionable. (Id); (MSJ, Deposition of Thornton, Page 32-33). For example, there were separate images of each letter of the alphabet with a naked woman next to each letter. (MSJ, Affidavit of Rinear, Attachment A-18). There was also an anatomical picture of a woman's vaginal area with each part identified. (Id). There were also pictures of people in sexual acts and of naked women on what appeared to be a computer screen. (Id). Stan gave these images to Rinear and the Detective Bureau for use in any potential case against Corsi. (MSJ, Affidavit of Rinear). During depositions in this case Corsi stated that he did not know how the pictures of naked women came to exist on his computer. (MSJ, Deposition of Corsi, Page 25-28).

However, he did admit that they purchased the computer new and that he often received email from porn sites. (Id., Page 25-28). The alleged videos of the girls changing clothes were not among the items seized however. (MSJ, Affidavit of Rinear).

Based upon Rinear's training and knowledge that most adults who participate in child pornography keep their videos somewhere, based on Charlie Mull's statement that Mr. Dave (Corsi) took some of the videos home, and based upon the entire investigation and finding to date, Rinear submitted an affidavit for a search of Corsi's home in Malvern to the Carroll County Court. (Id, Attachment A-6). The Court issued a search warrant and the home was searched. (Id, Attachment A-7). Items seized from the home include various items depicting nudity, a bag of VHS tapes, magazines with what appeared to be very young nude models, and a computer. (Id, Attachment A-8, and A-10). Videos taken at the daycare of the children were not found at the home. (Id).

### 3. THE ARREST/PROSECUTION

Following the search of the daycare, Rinear further discussed the case with Prosecutor Dwayne Jones and based upon the discovery of a loaded gun, a knife, the wireless camera, the naked images on the computer, all of which basically corroborated the statements of Mull and Zednick, Linda Rinear signed criminal charges

against Corsi. (MSJ, Affidavit of Rinear). Prosecutor Jones authorized the charges of (1) child endangering (sexually oriented matter) under R.C. 2919.22(B)(5)(Felony of Second Degree); (2) Disseminating Matter Harmful to Juveniles (recklessly allow juvenile to review sexually oriented matter)(Felony of the Fourth Degree); (3) Voyeurism under R.C. 2907.08(D)(5)(Felony of Fifth Degree); and with Endangering Children (gun and knife) under R.C. 2929.22(A)(Misdemeanor of First Degree). (Id., Attachment A-4). He was arrested on May 30, 2002. Detectives Rinear and Peake arrived at the daycare in plainclothes and in an unmarked car to arrest him. (Id). They took him out without handcuffs to the Sheriff's post in Northfield where they then handcuffed him. (Id). He was then taken to the jail where he was booked and then, upon authorization of the Sheriff's Department, he was released on a PR bond. (Id). He did not spend even one night in jail. (Id). Rinear's completed Incident Report that was prepared for the Sheriff's Office is attached to her Affidavit as Attachment A-5.

Following the arrest and the searches, and not finding any videos to support the allegations made by C.M. regarding the videotaping of other children, additional interviews were conducted. (Id). During these interviews, prior employees of the daycare center described incidents when they saw a screensaver of naked women on the Computer in Mr. Corsi's office where children would sometime go with him (MSJ, Rinear

Affidavit, Attachment A-12, A-13); children who were or had been attending the daycare further corroborated the evidence indicating they they had seen the nude pictures, the gun, and or the knife (MSJ, Rinear Affidavit, Attachment A-14, A-15, A-16); and another reported that their request to not have their child alone with Corsi was ignored (MSJ, Rinear Affidavit, Attachment A-17).

The case was presented to the grand jury who issued a secret indictment and the case proceeded through the criminal process. Close to trial the case began to unravel when one juvenile witness claimed that he could not remember and the parent of the other witness claimed he made it up and could not testify. (MSJ, Affidavit of Rinear). Despite that other evidence had been discovered that could be used to support the charges against him, the Summit County Prosecutors Office made the decision to dismiss all charges and all of his property was returned except for a roll of film that had been sent in for developing and the gun that he authorized the Sheriff to destroy. (MSJ, Rinear Affidavit, Attachment A-11). This civil case was subsequently filed.

In review of Petitioner's alleged facts recited in the brief filed herein, Respondents feel compelled to clear up inaccurate statements within the statement of the case in petitioner's brief. First, the child witnesses in this case were never confidential informants. Second, the interview with M.Z. did in fact corroborate

portions of C.M.'s statements. Clearly, although noone knew of any illegal conduct, this lack of knowledge could not lead the investigating detective to stop investigating. The ODJFS worker had told Corsi that he should remove the bed and stop meeting with kids alone in the room and yet he appeared to continue to do so. At least one parent who complained was concerned about his actions. The children interviewed revealed that Corsi was clearly acting inappropriately with children at the daycare. This was corroborated by prior employees of the daycare. Thus, it is clear that this case was about more than one child's statements.

Respondent maintains that the Sixth Circuit Court properly affirmed the District Court and urges this Court to deny the requested Writ.

## REASONS FOR DENYING THE WRIT

### THE CHILDREN INVOLVED IN THIS MATTER WERE NOT CONFIDENTIAL INFORMANTS - THEY WERE POTENTIAL VICTIMS

Corsi and Brothers appear to lend great weight to a wealth of caselaw that discuses the veracity of confidential informants. This entire line of cases is irrelevant to the facts of this case. The affidavits in support of the search warrants clearly stated that names and ages of the children from whom a portion of the information had been provided. Despite the full knowledge of the ages and names the Judge issuing the search warrant appeared comfortable with the search in light of all of the facts presented.

Moreover, there was no evidence presented that somehow Rinear withheld information about the veracity of her witnesses. There was no known prior history of dishonesty involving this child. The fact that the vibrating bed, pool and drop ceiling had not been specifically found did not discredit the child to the extent to destroy his credibility or even call it into question. Clearly there was a bed in the room. The fact that it did not vibrate was not a material issue. Moreover, there had been a pool outdoors that the kids played in which might have been stored in the room and removed. Finally, the child described a drop down ladder in the ceiling. They did find a ceiling in which the tiles could be removed, a

ladder could fit into, and handprints in the ceiling above the ceiling tile indicating someone had been in the ceiling. Thus, the alleged glaring discrepancies were merely the potential effect of a description from a youth versus the understanding of an adult. Linda Rinear had no reason to doubt the truth of what had been told to her and no duty to report any alleged veracity issues relating to her child victims.

## THE FOURTH AMENDMENT WAS NOT VIOLATED WHEN DETECTIVE RINEAR DID NOT SPECIFICALLY STATE IN HER AFFIDAVIT FOR THE SECOND SEARCH THAT THERE WAS NO VIBRATING BED, POOL OR DROP LADDER CEILING DOOR IN THE DAYCARE PRIVATE ROOM

As this Court has previously noted, affidavits in support of search warrants "are normally drafted by non-lawyers in the midst and haste of a criminal investigation." *United States v. Ventresca*, 380 U.S. 102 (1965). An affiant cannot be expected to include in an affidavit every piece of information gathered in the course of an investigation. Clearly an affidavit should not be judged on formalities, as long as probable cause is evident. Unlike the probable cause determination in *Brady*, the probable cause determination in search warrant cases is:

> derived from the Fourth Amendment, involves no definitive adjudication of innocence or guilt and has no due process

implications. Because the consequences of arrest or search are less severe and easier to remedy than the consequences of an adverse criminal verdict, a duty to disclose potentially exculpatory information appropriate in the setting of a trial to protect the due process rights of the accused is less compelling in the context of an application for a warrant. The duties imposed by *Brady* and *Franks* differ further. In the *Brady* context, the constitutional obligation to disclose material exculpatory information attaches regardless of the prosecutor's intent and constitutional error can be found without a demonstration of moral culpability. [*United States v. Agurs*, 427 U.S. 97, 110 (1976)]. A *Franks* violation, however, does require a showing of intent, i.e., a "deliberate falsehood" or "reckless disregard for the truth." *Franks*, 438 U.S. at 171. Whereas the "overriding concern" of *Brady* is with the "justice of finding guilt" that is appropriate at trial, *Agurs*, 427 U.S. at 112, *Franks* recognizes that information an affiant reports may not ultimately be accurate, and is willing to tolerate such a result at that early stage of the process, so long as the affiant believed the accuracy of the statement at the time it was made. *Franks*, 438 U.S. 165. These disparate standards of intent reflect differences in the consequences of error in the two contexts. *Mays. v. Dayton*, 134 F.3d 809, 816 (1998).

As such, the *Mays* court held that "except in the *very* rare case where the defendant makes a strong preliminary showing that the affiant ***with an intention to mislead*** excluded critical information from the affidavit, and the omission is critical to the finding of probable cause, *Franks* is inapplicable to the omission of disputed facts." 134 F.3d at 816. (Emphasis in original).

*There is no evidence in this case that Detective Rinear knew that the statements contained in her affidavit were false or inaccurate or that she deliberately excluded information that would preclude a finding of probable cause.* Thus the Petitioners have sought some way to create an issue which simply does not exist.

In fact, upon review of the affidavit it is clear that the Detective simply stated what she had found in her investigation from start to finish. She stated what the children had told her and then what she found. While she did not say she did not find a vibrating bed, a pool or a drop ladder ceiling, she did say that she found a futon type bed and a ceiling with removable tiles where a ladder could then fit. It is apparent what she did not find when reviewing what she reported that she did find. There was never any evidence that she had any intent to mislead anyone. Her intent was clearly to protect the children who were potentially being exploited at the daycare.

Moreover, the allegedly excluded information was not critical to the finding of probable cause in either situation. First, as to the search of the daycare, it appears as though there was a misunderstanding between Fatheree and Rinear regarding the private room. Fatheree evidently did not ask to gain access to that room so she could not have been denied access to that room. However, it is irrelevant whether she was denied access to that room because there is no way she could have ascertained whether the suspected activity was occurring even if she had been allowed in the room. Because the issue of inappropriate actions with children was not something she would have seen in that room – her access was only incidental to the big picture.

The fact that Rinear did not specifically state what was not in the daycare in her affidavit for the second search (the home search) is similarly non-critical to the probable cause finding.

Whether or not the "vibrating bed" or "pool" were in the room does not change the probable cause issue in either search. As to the first search the search warrant was not looking for a vibrating bed or pool – this was just a small part of the story to be corroborated by the search. By conducting the search they found the corroborating evidence of the video camera, the handprint in the ceiling and the manner in which the camera fit in the ceiling tile holes. Once these items were found in the first search, and the videos were not found, the next place to look for the videos was the Corsi home where the child had stated the

videos had been taken. By finding the video camera, handprint in the drywall above the ceiling, holes in the ceiling tiles and weapons, the combined effect created more than enough probable cause to search the home. Regardless of whether the second affidavit would have stated that the Detectives did not find a vibrating bed, pool or drop down ceiling ladder – probable cause would still exist due to the items which were found. There is therefore no Fourth Amendment claim in this case.

## CONCLUSION

Petitioners have not established any compelling reasons for this Court to grant the Petition. For these reasons, this Court should deny the writ requested herein forthwith.

Respectfully submitted,

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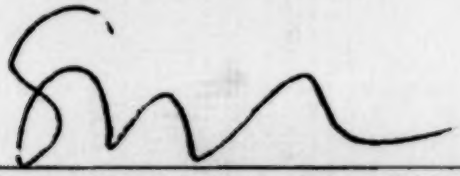

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